

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

TRACY LEE THOMAS, a/k/a
TREYTON L. THOMAS, a/k/a
TRAYTON L. THOMAS, a/k/a
TREY THOMAS, a/k/a
TRAY THOMAS, a/k/a
T.L. THOMAS, and
MARBURY ADVISORS INC.,

Defendants.

Case No. 16-CV-226

ECF Case

**DECLARATION OF
JUDITH M. SLOWLY IN
SUPPORT OF PLAINTIFF'S
MOTION FOR ALTERNATIVE
SERVICE, EXTENSION OF
TIME FOR SERVICE AND
PROPOSED ORDER**

I, Judith M. Slowly, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am employed as a Futures Trading Investigator by the Division of Enforcement ("Division") of the Commodity Futures Trading Commission ("CFTC"). I have been so employed since August 2004. My responsibilities as a Futures Trading Investigator include investigating registered and unregistered commodity firms and individuals located throughout the United States in order to ensure compliance with and enforcement of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.*, and CFTC Regulations, 17 C.F.R. §§ 1 *et seq.* (2014).

2. I have been assigned to the CFTC's investigation and litigation in the above-captioned case.

3. I am familiar with the facts of this case and the documents obtained and discussed in this declaration. The Complaint in this case was filed on March 22, 2016, against Defendants Tracy Lee Thomas, a/k/a Treyton L. Thomas, a/k/a Trayton L. Thomas, a/k/a Trey Thomas, a/k/a

Tray Thomas, a/k/a T.L. Thomas (“Thomas”) and Marbury Advisors LLC (“Marbury”). (See Dkt. #1). During the Relevant Period alleged in the Complaint, Thomas resided in Naples, Florida. (Attached as Exhibit 1 is a true and correct copy of the Summary Information for the account of Marbury from Interactive Brokers which shows an address for Thomas in Naples, Florida, on page 5 of Exhibit 1).

4. Thomas’s wife is Cheryl A. Stone (“Stone”). In March 2016, I used a commercially available online investigative software and ran a background pedigree report for Stone which revealed an address in Keswick, Virginia.

Attempts to Serve Defendant Thomas

5. Throughout the course of the investigation and litigation, I periodically ran background searches in an attempt to locate Thomas and his wife. These searches occurred between 2014 and 2016 and revealed addresses in Naples, Florida, Cambridge, Massachusetts and Keswick, Virginia. At the time the Complaint was filed, the Keswick, Virginia address was the most recent address I had located.

6. Assuming that Thomas resided at the same address as his wife, the CFTC retained a process server for personal service of the Summons and Complaint on Thomas at the Keswick, Virginia address. On March 23, 2016, the process server attempted service but was informed by a female employee who did not provide her name at the residential complex that Thomas no longer lived at the address. Attached as Exhibit 2 is a true and correct copy of the proof of non-service and Declaration of Private Process Server, both affirmed on March 29, 2016.

7. On April 5, 2016, Plaintiff’s counsel emailed the Notice of Lawsuit and Waiver to Thomas to the following e-mail addresses: tthomas05@gmail.com, tthomas@candw.ky, and t.thomas@post.harvard.edu. A true and correct copy of the e-mail and attachments is attached

hereto as Exhibit 3. The email to tthomas05@gmail.com and t.thomas@post.harvard.edu did not bounce back and appear to be delivered. Nevertheless, the CFTC did not receive a response to this email to Thomas. However, the e-mail to tthomas@candw.ky bounced back and was not delivered. A true and correct copy of the undeliverable e-mail notification is attached as Exhibit 4.

8. On April 5, 2016, the CFTC also mailed via certified U.S. mail, return receipt requested the Notice of Lawsuit and Waiver to Thomas to a post office box listed for Cheryl Stone in Keswick, Virginia. On or about April 13, 2016, the envelope was returned to the CFTC stamped "Return to sender" and "unable to forward." A true and correct copy of the front of the envelope is attached as Exhibit 5.

9. In May 2016, the CFTC retained the Albemarle County Sheriff's Office to make another attempt to serve Defendant Thomas at the Keswick, Virginia address. The Sheriff's deputy was informed by the owner of the property that Thomas had moved from that address in or around June 2015. Attached hereto as Exhibit 6 is a true and correct copy of the sworn deputy's statement.

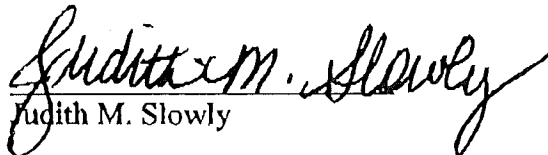
10. In June 2016, the CFTC received information from a third party that Thomas and his wife were residing at an address in Charlottesville, Virginia. The CFTC again retained the Albemarle County Sheriff's Office to make another attempt to serve Thomas, this time at the Charlottesville address. However, this third attempt was also unsuccessful as indicated on the attached deputy's sworn statement (Exhibit 7 is a true and correct copy of the Sheriff's Affidavit). According to the deputy's statement, Thomas's wife, a neighbor, and the owner of the property said Thomas no longer lived at the Charlottesville address.

11. Attached as Exhibit 8 is a true and correct copy of an email from Marty Ward of Interactive Brokers to Plaintiff's counsel confirming the Summons was sent to Marbury Advisors LLC. I subsequently spoke with Mr. Ward who confirmed that the Summons and Complaint were sent to Marbury Advisors LLC in the Cayman Islands via Fedex and that but that the package could not be delivered because Marbury was no longer registered in the Caymans. The CFTC does not have a current address for Thomas and has been unable to locate him. Attached as Exhibit A is a copy of the CFTC's proposed Legal Notice for publication in the Charlottesville *Daily Progress*.

* * * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York on September 16, 2016


Judith M. Slowly